HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Sunday, May 21, 2017
85th Legislature, Number 77
The House convenes at 2 p.m.
Part One

Thirty-three bills are on the daily calendar for second-reading consideration today. Bills on the Major State or General State calendars analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
85(R) - 77

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Sunday, May 21, 2017
85th Legislature, Number 77
Part 1

SUBJECT: Continuing the council and boards for physical and occupational therapy

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

SENATE VOTE: On final passage, April 18 — 30-1 (Hall)

WITNESSES: For — Mary Hennigan, Texas Occupational Therapy Association; Donald Haydon and Mark Milligan, Texas Physical Therapy Association

Against — None

On — John Maline and Stephanie Johnston, Executive Council of Physical Therapy and Occupational Therapy Examiners; (*Registered, but did not testify*: Erick Fajardo, Sunset Advisory Commission)

BACKGROUND: The Executive Council of Physical Therapy and Occupational Therapy Examiners is responsible for regulating physical therapy and occupational therapy. In 1993, the Legislature brought the Texas Board of Physical Therapy and the Texas Board of Occupational Therapy Examiners under the administration and oversight of the executive council.

Functions. The executive council issues and renews physical and occupational therapy licenses, registers physical and occupational therapy facilities, enforces the physical and occupational therapy statutes and rules and investigates possible violations, establishes fees, and approves proposals for rule changes from the boards.

Governing structure. Each board consists of nine members appointed by the governor. The executive council includes a governor-appointed presiding officer, who is a member of the public, and a public member and

licensee member from each of the boards.

Funding. In fiscal 2015, the agency received an appropriation of nearly $1.3 million, 95 percent of which came from licensing and facility registration fees. Slightly more than half of expenditures go toward licensing, with enforcement costs and payments to Texas.gov making up the bulk of the remaining expenses.

Staffing. The executive council provides administrative support to the boards and employs 20 staff: an executive director, coordinators for each board, three accounting staff, a business manager, three investigators, and ten licensing employees.

Expiration. If not continued by the Legislature, the executive council and the boards would expire in statute on September 1, 2017.

DIGEST:

SB 317 would continue the Texas Board of Physical Therapy Examiners, the Texas Board of Occupational Therapy Examiners and the Executive Council of Physical and Occupational Therapy Examiners until September 1, 2029. The bill also would remove the requirement for occupational and physical therapy facilities to register with a board, adopt the interstate Physical Therapy Licensure Compact, allow licensing by endorsement, and require fingerprint-based background checks for license holders, among other provisions.

Registering facilities. The bill would repeal the requirement for physical therapy and occupational therapy facilities to register with their respective boards. It would direct the physical therapy and occupational therapy boards to establish a process to expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet board registration requirements, as the law existed on January 1, 2019.

Physical Therapy Licensure Compact. The bill would adopt the Physical Therapy Licensure Compact, under which Texas and participating states would recognize each other's physical therapy licenses, subject to certain limited requirements.

The bill would specify reciprocity and oversight requirements, the process

for dispute resolution, enforcement, data reporting, financing, adverse actions, and termination of the compact, among other provisions. The compact would take effect on the date the tenth member state enacted the compact.

License by endorsement. The physical therapy and occupational therapy boards would be required to license certain practitioners from other jurisdictions through license by endorsement. The bill would allow a physical therapist, physical therapist assistant, occupational therapist, or occupational therapist assistant with a current, unrestricted license from a jurisdiction with licensing requirements substantially equivalent to Texas to be licensed without having to retake the licensing examination.

Licensing examination. The bill would require the physical therapy and occupational therapy boards to recognize, by rule, a national testing entity to administer the examination to obtain a license as a physical therapist, occupational therapist, physical therapist assistant, or occupational therapist assistant.

Either board could require applicants to pass a jurisprudence examination and meet other board requirements to receive a license.

Fingerprint-based background checks. The physical therapy and occupational therapy boards would be required to conduct fingerprint-based criminal background checks before issuing or renewing licenses. A license holder would not be required to submit fingerprints to renew a license if he or she had previously submitted fingerprints when the license initially was issued or as part of a previous license renewal. The bill would allow the boards to administratively suspend or refuse to renew the license of a person who did not provide fingerprints. Either board could enter into an agreement with the Department of Public Safety to administer the criminal history record check and authorize the department to charge applicants a fee for this purpose.

Sanctions schedule. The physical therapy and occupational therapy boards would be required, by rule, to adopt a schedule of administrative penalties and other sanctions the boards could use. In adopting the schedule, the bill would require the boards to ensure that the amount of

the penalty or severity of the sanction was appropriate for the type of violation or conduct that was the basis for disciplinary action.

Foreign-trained applicants. The bill would remove the requirement for a foreign-trained physical therapy license applicant to be of good moral character. A foreign-trained applicant for an occupational therapy license would be required to complete academic and supervised field work requirements substantially equivalent to those required of other applicants.

Executive council and board member requirements. SB 317 would require the executive council, the physical therapy board, and the occupational therapy board to develop and implement policies that clearly separated the policymaking responsibilities of the council and boards, respectively, from the management responsibilities of the director and the staff of the council and each board.

The bill would remove the executive council's responsibility for administering written examinations and collecting fees as it related to licenses.

A member of the executive council or either board would be required to complete a training program covering certain information related to their practices and obligations, as specified in the bill.

The bill would add conflict of interest provisions prohibiting board and council members or their spouses from working for Texas trade associations for physical or occupational therapy.

Effective date. The bill would take effect September 1, 2017, except as otherwise provided in the bill.

SUPPORTERS SAY:

SB 317 would continue the executive council and boards for another 12 years, ensuring the state's ability to regulate professions that play an important role in patients' well-being. Physical and occupational therapists have direct physical contact with patients, many of whom are from vulnerable populations, including the disabled, children, and the elderly. Texas has an interest in regulating physical and occupational therapy to prevent potential harm to patients.

Registering facilities. The bill appropriately would remove the requirement that physical therapy and occupational therapy facilities register with their respective boards, eliminating an unnecessary and costly burden to facility owners. Punishments for not registering can be severe, and virtually all disciplinary action is taken against individual licensees, not facility owners, even if the licensee had no responsibility in the management of the facility.

Registering facilities does not improve public health or safety. Removing the registration requirement would not affect the quality of physical or occupational therapy facilities because safety inspections are not part of the registration process. While registration has served as an instrument for data collection, similar information and other data related to licensee's work settings could be gathered through the licensee renewal process.

Removing the registration requirement for facilities also would reduce bureaucracy. Texas should not continue to require an unnecessary registration solely to generate revenue. The change to the registration requirement would take effect at the beginning of fiscal 2020 and would not affect the fiscal 2018-19 budget.

Physical Therapy Licensure Compact. By adopting the compact, SB 317 would streamline the process for Texas practitioners who met certain qualifications to work in other states, and vice versa. There are not enough physical and occupational therapists to meet current and future needs in Texas, and the bill would provide a path for qualified practitioners to acquire a Texas license, increasing the state's supply of practitioners while also ensuring safety.

License by endorsement. Through license by endorsement, the bill would allow practitioners in other jurisdictions with substantially the same requirements as those in Texas to be recognized as licensed practitioners in this state. Providing clear authority to issue licenses by endorsement would help ensure an expedited path for qualified licensees elsewhere.

Fingerprint-based background checks. Requiring background checks under the bill would increase patient safety. Physical and occupational therapists often practice outside regulated locations, including clients'

homes, and can treat patients who are elderly or members of vulnerable populations. Because of this, there is a heightened need to ensure physical and occupational therapists do not have a criminal history that would place a client's health or safety at risk. Fingerprint-based background checks are the most effective type of background check and provide the most appropriate level of information to the board.

OPPONENTS SAY:

Registering facilities. Removing the requirement for physical or occupational therapy facilities to register would take away the board's ability to assure the quality of physical therapy facilities. The facility registration process was created in order to keep track of facilities that were hiring unlicensed physical therapists, and removing the registration requirement could affect patient safety.

In addition, the loss of facility registration fees would cost the state more than $1 million in general revenue each year. This revenue could be sorely needed in future biennia when the fiscal climate may not be any better than the budget constraints Texas faces today.

Fingerprint-based background checks. The use of fingerprint-based background checks is not the only valid method to screen candidates for licenses. By restricting the method for background checks to fingerprints, the bill could stifle progress toward the boards' adopting newer methods and technology for this purpose.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an annual cost to general revenue of approximately $1.1 million beginning in fiscal 2020 due to the loss of facility registration fees.

SUBJECT: Making certain computer networks, web addresses a common nuisance

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, April 19 — 30-1 (Hall), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2770:*
For — (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Caroline Joiner, TechNet; Zindia Thomas, Texas Municipal League; Jennifer Allmon, the Texas Catholic Conference of Bishops)

Against — None

On — Kirsta Melton, Office of the Attorney General

BACKGROUND: Under Civil Practice and Remedies Code, sec. 125.0015, a common nuisance can be place where persons habitually go for certain criminal activities that are knowingly tolerated by the person maintaining it.

DIGEST: SB 1196 would add, under Civil Practice and Remedies Code, sec. 125.0015, that a person operating a web address or computer network in connection with certain sex crimes, organized criminal activity, or employment harmful to a child or for human trafficking was maintaining a common nuisance. The bill would exclude providers of remote computing services or electronic communication services to the public, internet service providers (ISPs), search engine operators, browsing or hosting companies, operating system providers, or device manufacturers as potential common nuisances.

The bill would authorize an individual, the attorney general, or a district,

county, or city attorney to bring a suit against a person declaring that a person operating a web address or computer network was maintaining a common nuisance.

The sole remedy available for a finding that a web address or computer network was a common nuisance would be a judicial finding issued to the attorney general. The attorney general could post the finding on its website or notify internet service providers, search engine operators, browsing or hosting companies, or device manufacturers on which applications were hosted of the judicial finding.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1196 would help combat human trafficking and underage prostitution by expanding what constitutes a "place" under common nuisance law to include websites and computer networks connected to certain crimes. This would give authorities more tools to address the evolving sex crime and human trafficking industries. The bill would enable local and state officials to enjoin and abate these websites and computer networks, cutting off access to their business.

The bill would promote law enforcement cooperation with ISPs and other internet technology actors to combat trafficking and changing criminal modalities. This cooperation also could encourage greater self-regulation by the ISP industry, which is key in addressing criminal activity in the midst of rapidly expanding technology.

SB 1196 would use an existing law on common nuisances and apply it to the internet to help shut down parts of the human trafficking supply chain. Currently, people throughout Texas can purchase trafficked adults and children on the internet. The bill would help address the easy access customers have to this illegal activity and enable law enforcement to pursue the purveyors with another tool.

Nuisance laws give owners of "places" the opportunity to remedy the nuisance. If the illegal activity is stopped, there is no need for the lawsuit to continue. Those who operate a website where children are sold for sex, even if they are not the ones doing the selling, are in fact bad actors

facilitating the sale of children for sex.

The bill would use the common nuisance law appropriately and clearly. The nuisance law is not meant to prosecute people who are committing the specified crimes. Rather, it is designed to go after actors enabling criminal activity through their facilities. In this case, the facility is virtual, and the bill would affect those actors who supported human trafficking and sex crimes through their "housing" of bad actors.

OPPONENTS SAY:

Nuisance laws were developed to address conduct at physical property, and SB 1196 would attempt to treat a computer network in the same manner. However, physical property and a computer network are different in nature, and the bill could lead to ambiguity in the abatement of these activities.

OTHER OPPONENTS SAY:

SB 1196 would not go far enough to address trafficking and illegal sexual activity facilitated by the internet. Self-regulation of internet businesses is ideal but unlikely to be sufficient. Directing ISPs to proactively search for websites facilitating human trafficking could be another approach to addressing these businesses. The bill also should include mobile phone networks in its scope as an increasing number of websites have mobile capability.

NOTES:

A companion bill, HB 2770 by Smithee, was approved by the House on May 5.

SUBJECT: Authorizing advanced practice registered nurses as Medicaid providers

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Price, Sheffield, Arévalo, Burkett, Guerra, Klick, Oliverson, Zedler

0 nays

3 absent — Coleman, Collier, Cortez

SENATE VOTE: On final passage, May 8 — 28-3, Buckingham, Campbell, Schwertner

WITNESSES: *On House companion bill, HB 1225:*
For — Blake Hutson, AARP Texas; Holly Jeffreys and Elishia Featherston, Texas Nurse Practitioners; (*Registered, but did not testify*: Renee Licorish, American Association of Nurse Practitioners; Hermina Ramos, American Nephrology Nurses Association-Alamo City Chapter; Gordon Mattimoe, Andrews County Immunization Coalition; Stephanie Southard, APRN; Emily Eastin, Kimberly Oas, Patricia Olenick, Helen Rodriguez, and Jan Sumner, APRN Alliance; Anne Dunkelberg, Center for Public Policy Priorities; Liz Garbutt, Children's Defense Fund; Lynda Woolbert, Coalition for Nurses in Advanced Practice; Eva Bell and Cristi Day, Coastal Bend Advanced Practice Nurses; Erin Biscone and Wendy Wilson, Consortium of Texas Certified Nurse-Midwives; Greg Hansch, NAMI Texas; Juliana Cruz, Nurse Practitioners; Andrew Cates, Nursing Legislative Agenda Coalition; Amanda Martin, Texas Association of Business; Mary Allen, Texas Association of Community Health Centers; Jamie Dudensing, Texas Association of Health Plans; Lee Johnson, Texas Council of Community Centers; Joshua Houston, Texas Impact; Dan Finch, Texas Medical Association; Ann Birka, Casey Haney, Sheri Innerarity, Tanya Marin, Yen Nguyen, Renee Poisson, and Linda Robinson, Texas Nurse Practitioners; Cindy Zolnierek, Texas Nurses Association; David Reynolds, Texas Osteopathic Medical Association; Alan Abraham and Carlos Higgins, Texas Silver Haired Legislature; and 35 individuals)

Against — (*Registered, but did not testify*: Norman Moore; Whitney Morgan)

On — (*Registered, but did not testify*: Debra Diaz-Lara, Texas Department of Insurance; Andy Vasquez and Emily Zalkovsky, Health and Human Services Commission)

BACKGROUND:

Government Code, ch. 533 addresses the Medicaid managed care program. Sec. 533.005(13) states that a contract between a managed care organization and the Health and Human Services Commission (HHSC) for the organization to provide health care services to recipients must contain a requirement that, notwithstanding any other law, the organization:

- use advanced practice registered nurses and physician assistants in addition to physicians as primary care providers to increase the availability of primary care providers in the organization's provider network; and
- treat advanced practice registered nurses and physician assistants in the same manner as physicians with regard to selection and assignment as primary care providers, inclusion as primary care providers in the organization's provider network, and inclusion as primary care providers in any provider network directory maintained by the organization.

Health and Safety Code, ch. 62 addresses the Children's Health Insurance Program (CHIP). Sec. 62.1551 requires the HHSC executive commissioner to adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses to be treated in the same manner as primary care physicians with regard to certain factors.

DIGEST:

SB 654 would allow an advanced practice registered nurse to be included as a primary care provider in the provider network for Medicaid managed care or the Children's Health Insurance Program (CHIP), regardless of whether the physician supervising the advanced practice registered nurse

was in the provider network. The bill also would require the Health and Human Services Commission to ensure that advanced practice registered nurses could be selected by and assigned to Medicaid recipients as their primary care providers regardless of whether the physician supervising the advanced practice registered nurse was included in the commission's directory of Medicaid providers.

The bill would specify that its provisions could not be construed to authorize a managed care organization or other entity to supervise or control the practice of medicine as prohibited by the Medical Practice Act.

If, before implementing any provision of the bill, a state agency determined that a waiver or authorization from a federal agency was necessary to implement that provision, the affected agency would be required to request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

SB 654 would increase access to medical care across Texas by making it easier for advanced practice registered nurses to be included in a health plan's provider network. There is a shortage of primary care providers in Texas, especially for Medicaid patients, and lack of clarity about whether an advanced practice registered nurse may join a health plan's network exacerbates this issue. Many other states have made the change the bill would make, and Texas lags behind on this issue.

SB 654 would clarify that Medicaid and CHIP health plans could include advanced practice registered nurses in their networks, regardless of whether a nurse's supervising physician was also in the network. Advanced practice registered nurses currently provide necessary medical care to underserved patients across Texas, but they may not be reimbursed for their services because the statute on Medicaid provider networks is unclear as it relates to advanced practice registered nurses.

The supervising physicians for advanced practice registered nurses commonly do not work in the same city or county as the supervised nurse, and SB 654 would not change supervision requirements for APRNs nor

affect the scope of practice for APRNs.

OPPONENTS SAY:

Authorizing advanced practice registered nurses to be primary care providers under a health plan in which their supervising physicians were not involved could allow Medicaid and CHIP patients to receive care from a nurse who was not subject to a sufficient level of oversight.

NOTES:

A companion bill, HB 1225 by Smithee, was reported favorably from the House Committee on Public Health on May 5.

SUBJECT: Modifying municipal annexation authority and processes

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 5 ayes — Herrero, Bell, Bailes, Krause, Stucky

1 nay — Blanco

1 absent — Faircloth

SENATE VOTE: On final passage, April 24 — 20-10 (Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion bill, HB 424:*
For — Richard Cash, Committee to Incorporate Alamo Ranch; Glenda Haynes and Michael Stewart, Homeowners Against Annexation; Alton Moore, Hudson Bend Incorporation Committee; Robin Lennon, Kingwood Tea Party; Michael Misikoff, Peninsula at Westlake; James Quintero, Texas Public Policy Foundation; John Carlton, Texas State Association of Fire and Emergency Districts; Howard Hagemann, Janet Maxey, and Shirley Ross, Wells Branch MUD; Charles Walters, Wells Branch Neighborhood Association; and nine individuals; (*Registered, but did not testify:* Justin Keener, Americans for Prosperity -Texas; Trevor Wortes, Bexar County Emergency Services District #2 Fire Department; Barbara Green, Martha Kantor, and Michael Kantor, Homeowners Against Annexation; Roger Borgelt, North Austim MUD #1, River Place RCA, Peninsula at Westlake; Clayton Hadick, NW 151 Annexation Board; Tim Mattox, River Place Home Owners Association; Grant Walker, River Place Neighborhood; Terri Hall, Texans Uniting for Reform and Freedom (TURF); Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Marissa Patton, Texas Farm Bureau; William Anderson, Upper Bull Creek HOA; and 44 individuals)

Against — Virginia Collier, City of Austin; Dana Burghdoff and Melinda Ramos, City of Fort Worth; Michael Quint, City of McKinney; Joe Krier and Peter Zanoni, City of San Antonio; Craig Farmer, City of Weatherford; C. Leroy Cavazos-Reyna, San Antonio Hispanic Chamber

of Commerce; Scott Houston, Texas Municipal League; (*Registered, but did not testify:* Julie Acevedo, City of Baytown; Mario Martine, City of Brownsville; Jennifer Rodriguez, City of College Station; Tom Tagliabue, City of Corpus Christi; Lindsey Baker, City of Denton; Evelyn C. Castillo, City of Edinburg; Guadalupe Cuellar, City of El Paso; T.J. Patterson, City of Fort Worth; Tony Privett, City of Lubbock; Karen Kennard, City of Missouri City; Rick Ramirez, City of Sugar Land; Bill Kelly, Mayor's Office, City of Houston; Richard Perez, San Antonio Chamber of Commerce; Kelly Davis, Save Our Springs Alliance)

On — Bill Fry, Association of Water Board Directors - Texas; Col. Jonathan Wright, United States Air Force; John Hockenyos; David Smith

BACKGROUND: Local Government code, ch. 43 governs municipal annexation, including annexing authority, requirements for cities to annex based on population, procedures for limited purpose annexation, and the process for disannexation.

DIGEST: CSSB 715 would make various changes to Local Government Code, ch. 43 relating to municipal annexation, including limiting certain municipalities' ability to annex an area for certain limited purposes. The bill also would provide processes for annexing areas depending on population and would allow a municipality to annex an area at the request of each landowner in that area.

Limited purpose annexation. The bill would prohibit certain municipalities from annexing an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area. This prohibition would apply to a municipality wholly or partly located in a county with a population of at least 500,000 or to a municipality wholly located in one or more counties each with a population of less than 500,000 that proposed to annex an area in a county with a population of at least 500,000.

Annexation authority. The bill would allow certain municipalities to annex an area noncontiguous to its boundaries if the area was in the municipality's extraterritorial jurisdiction. Such a municipality also could annex an area if it were requested by each landowner in the area. The

municipality would need to negotiate and enter into a written agreement with local landowners for the provision of services and hold at least two public hearings before annexing the area. These provisions would apply to a municipality wholly or partly located in a county with a population of at least 500,000 or to a municipality wholly located in one or more counties each with a population of less than 500,000 that proposed to annex an area in a county with a population of at least 500,000.

Roads. The bill would allow a municipality in a county of at least 500,000 to annex by ordinance a road or the right-of-way of a road at the request of the road's owner or managing political subdivision.

Municipal annexation plan. CSSB 715 would create a set of procedures and rules for annexing areas with a population of less than 200 and another for annexing areas with a population of 200 or more. These procedures would apply to a municipality wholly or partly located in a county with a population of at least 500,000 or to a municipality wholly located in one or more counties each with a population of less than 500,000 that proposed to annex an area in a county with a population of at least 500,000.

To annex an area with a population of less than 200, a municipality would need to obtain consent through a petition signed by more than half of the registered voters in the area.

To annex an area with a population of 200 or more, a municipality would need to:

- obtain consent through an election at which a majority of votes received were in favor of annexation; and
- if registered voters did not own more than half of the land in the area, obtain consent through a petition signed by more than half of area landowners.

CSSB 715 would establish timeframes for steps in the annexation process, requirements for public hearings and notifications, and procedures for handling petitions, elections, and protest petitions. The bill would require a municipality proposing to annex an area to adopt a resolution with a

statement of intent to annex, a detailed description and map of the area to be annexed, and a description of the services to be provided to the area by the municipality upon annexation.

Exemptions. The bill would provide certain exceptions to its annexation requirements in situations such as annexation related to strategic partnerships.

This bill would take effect September 1, 2017, and would apply only to the annexation of an area that was not final before that date.

SUPPORTERS SAY:

CSSB 715 would prevent certain cities from annexing areas around them without the consent of residents in those areas, protecting the rights of property owners throughout the state. These cities still could annex areas outside their limits under the bill, but they first would have to obtain buy-in from residents and receive approval through an election or petition. This would place more power in the hands of residents potentially affected by annexation and would give property owners a greater voice in the governance of their property.

The bill would not prohibit municipal annexation. In fact, it would streamline the process and allow annexation to take place more quickly if it were desired, bringing about shared benefits sooner.

Limited purpose annexations often provide no services and few benefits to the areas annexed and should be eliminated in certain cases.

OPPONENTS SAY:

CSSB 715 would limit many cities' ability to annex territory around them by requiring elections in certain areas. The power to annex allows cities to expand their tax bases and ensure that residents living outside city limits help pay for services from which they benefit. The petition and election process required by the bill would be complicated and excessive and allow a small group of people relative to the regional population to prevent cities from accessing the additional financial support derived from annexation.

The bill also would eliminate limited purpose annexation in some cases. These types of annexations have worked well because they allow a city to plan for extension of municipal services to coincide with development

activity in the region and to impose development standards for protection of the region's environment, enhancing the quality of life for all residents.

NOTES:

CSSB 715 differs from the Senate-passed version in certain ways, including that the committee substitute would apply various provisions, such as the prohibition on limited purpose annexation, based on certain population brackets.

A companion bill, HB 424 by Huberty, was reported favorably by the House Land and Resource Management Committee on April 28 and placed on the General State Calendar for May 8.

SUBJECT: Amending safety and security requirements for schools

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, May 10 — 27-3 (Buckingham, Burton, V. Taylor)

WITNESSES: For — (*Registered, but did not testify*: Paige Williams, Texas Classroom Teachers Association; Portia Bosse, Texas State Teachers Association)

Against — None

On — (*Registered, but did not testify*: Kara Belew, Heather Mauze, and Candace Stoltz, Texas Education Agency)

BACKGROUND: Education Code, sec. 37.108 requires each school district or public junior college district to adopt and implement a multihazard emergency operations plan for use in the district's facilities. The plan must address mitigation, preparedness, response, and recovery.

Each district must conduct a safety and security audit of its facilities at least once every three years, following procedures developed by the Texas School Safety Center (TxSSC) or a comparable public or private entity. Audit results are reported to the district's board of trustees and TxSSC. Sec. 37.207 requires TxSSC to develop the model safety and security audit procedure for use by the districts.

Sec. 37.109 requires each school district to establish a school safety and security committee and sets a committee's duties on behalf of the district.

Concerns have been raised that some public school districts and open-

enrollment charter schools lack organization in times of emergency. Some suggest that improvements should be made to strengthen the current school safety framework to ensure that students in Texas remain safe.

DIGEST:

SB 2078 would amend certain requirements related to school safety, including provisions related to the multihazard emergency operations plan, safety and security audits, and safety and security committees. It also would create a notification requirement for certain threats.

School districts and open-enrollment charter schools would be subject to SB 2078. In addition, the bill would make open enrollment charters subject to school safety requirements in existing law under Education Code, ch. 37.

Multihazard emergency operations plan. A school district's multihazard emergency operations plan would be required to include:

- a chain of command that designated primary and secondary individuals responsible for making final decisions during a disaster or emergency situation;
- provisions for responding to a natural disaster, active shooter, and any other dangerous scenario identified by the Texas Education Agency (TEA) or the Texas School Safety Center (TxSSC);
- provisions for ensuring the safety of students in portable buildings, which would be developed by TxSSC by January 1, 2018;
- provisions for providing immediate notification to parents or guardians in circumstances involving a significant threat to the health or safety of students;
- a statement of the amount per student expended on school safety determined by a method developed by TEA and TxSSC; and
- the name of each individual on the district's school safety and security committee and the date of each committee meeting during the preceding year.

TEA would adopt a model multihazard emergency operations plan that school districts could use to develop the required district-specific plan. The agency also would be required to adopt a cycle to review a school

district's plan and make an independent final determination of whether it complied with applicable standards. TxSSC would participate in TEA's review process and could provide recommendations to that effect.

TEA would post information on its website that identified each school district that:

- failed to submit its multihazard emergency operations plan for review and approval;
- submitted a plan that did not comply with an applicable standard; or
- failed the required school safety and security audit.

Safety and security audits. In conducting a safety and security audit of a district's facilities, the district also could follow audit procedures developed by a person included in a registry of persons providing school safety or security consulting services established by TxSSC, instead of a public or private entity comparable to the safety center. TxSSC would be required to compile school district audit results and report them to TEA, and districts also would be required to report the results to the agency.

TEA would be required to provide assistance to TxSSC in developing the model safety and security audit procedure.

Safety and security committee. The bill would establish membership and meeting requirements for a school district's safety and security committee and clarify that these committees would be subject to open meetings laws. The committee would be required to periodically provide recommendations regarding updating the district's multihazard emergency operations plan in accordance with best practices identified by TEA, TxSSC, or a person included in the center's registry.

Notification regarding bomb or terroristic threats. A school district that received a bomb or terroristic threat relating to a campus or other district facility at which students were present would be required to provide notification of the threat as soon as possible to the parent or guardian of or other person standing in parental relation to each student who was assigned to the campus or who regularly used the facility.

Effective date. The Commissioner of Education would be required to implement this bill only if the Legislature appropriated money specifically for that purpose. If money was not appropriated, the commissioner could, but would not be required to, implement the bill using other available appropriations.

The bill would take effect September 1, 2017.

NOTES: According to the Legislative Budget Board's fiscal note, the bill would result in a negative impact of $445,778 to general revenue related funds through fiscal 2018-19, with a similar impact in subsequent biennia.

SUBJECT: Requiring reporting on physical education in school districts

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, May 9 — 27-4 (Burton, Hall, Kolkhorst, V. Taylor)

WITNESSES: *On House companion bill, HB 3606:*
For — Jud Scott, Mission: Readiness; Tania Boughton; (*Registered, but did not testify*: Jim Arnold, American Cancer Society Cancer Action Network; Joel Romo, American Diabetes Association, the Cooper Institute; April Brumfield, American Heart Association; Brooks Ballard, CATCH Global Foundation, Partnership for a Healthy Texas; Jenny Eyer, Children at Risk; Chris Masey, Coalition of Texans with Disabilities; Lisa Lauter and Rocaille Roberts, Healthy Living Matters; Christine Yanas, Methodist Healthcare Ministries of South Texas; Adriana Kohler, Texans Care for Children; Marshall Kenderdine, Texas Academy of Family Physicians; Paige Williams, Texas Classroom Teachers Association; Troy Alexander, Texas Medical Association; Clayton Travis, Texas Pediatric Society; Kyle Ward, Texas PTA; Michele Rusnak, Texas Association for Health, Physical Education, Recreation, and Dance)

Against — None

On — (*Registered, but did not testify* Kara Belew, Monica Martinez, and Shelly Ramos, Texas Education Agency, Harold Kohl)

BACKGROUND: Under Education Code, sec. 38.0141, each public school district is required to provide to the Texas Education Agency information relating to student health and physical activity. The information is provided for the district as a whole and for each school campus in the district. Some have

suggested making information on student participation in physical education classes available to the public.

DIGEST:

SB 1873 would require that, within one year of receiving the information submitted under Education Code, sec. 38.0141, the Commissioner of Education be required to complete a report on physical education (PE) provided by each school district and publish it on TEA's website. The report would include:

- the number of PE classes offered at each campus in the district and the number of days, classes, and minutes offered weekly;
- the ratio of students enrolled in PE classes in the district compared to the overall enrollment;
- the average PE class size at each campus in the district;
- the number of PE teachers in the district who were licensed, certified, or endorsed by an accredited teacher preparation program to teach PE;
- whether each campus had the appropriate equipment and adequate facilities for students to engage in the amount and intensity of physical activity required under state curriculum standards;
- whether the district allowed accommodations for PE courses to meet the needs of students with disabilities; and
- whether the district had a policy allowing teachers or administrators to withhold physical activity from a student as punishment.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES:

A companion bill, HB 3606 by Wilson, was reported favorably by the House Public Education Committee on April 27 and placed on the General State Calendar for May 9.

SUBJECT: Changing requirements and reporting of state employee leave

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 6 ayes — S. Davis, Capriglione, Nevárez, Price, Shine, Turner

0 nays

1 absent — Moody

SENATE VOTE: On final passage, April 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 661.902 allows a state employee to take emergency paid leave in the case of a death in the employee's family or if the administrative head of an agency determines that an employee has shown good cause for taking emergency leave.

In 2016, a report by the State Auditor's Office found inconsistent leave policies across state government. The office recommended that the Legislature consider clarifying statutory provisions related to the use of emergency leave by requiring state agencies to use standardized reasons for leave accounting and adding a statewide reporting requirement for certain types of employee leave.

DIGEST: CSSB 73 would require state agencies to adopt a policy governing leave for employees under Government Code, ch. 661, including vacation leave, sick leave, and emergency leave.

The policy would be required to provide clear and objective guidelines to establish under what circumstances an employee of the agency could be entitled to or granted each type of leave. A state agency would be required to post the policy on its website in a location easily accessible by the agency's employees and the public.

An administrative head of an agency would be authorized to determine

that a reason other than a death in the family was sufficient reason for granting emergency leave. The leave could not be granted to an employee unless the administrative head believed in good faith that the employee intended to return to his or her position after the emergency leave period expired.

The head of an agency would be required to report to the comptroller by October 1 of each year the name and position of each employee who had been granted more than 32 hours of emergency leave during the previous state fiscal year, the reason for the leave, and the total number of hours granted to that employee. The first report would be due October 1, 2017, covering the period from September 1, 2016, to August 31, 2017.

As part of the centralized accounting and payroll system or any successor system, the comptroller would be required to adopt a uniform system for state agencies to report each type of leave.

The bill would take effect September 1, 2017, and would apply only to a grant of emergency leave made on or after that date.

NOTES:

CSSB 73 differs from the Senate-passed version by using the definition for a state agency found under the statutory provisions relating to the state employee sick leave pool.

A companion bill, HB 360 by Geren, was referred to the House General Investigating and Ethics Committee on February 21.

SUBJECT: Creating certain information security requirements for state agencies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Oliveira, Paddie, E. Rodriguez, Smithee

SENATE VOTE: On final passage, May 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 2054.133 requires each state agency to develop an information security plan for protecting the agency's information from unauthorized access, disclosure, destruction, and other security threats. By October 15 of each even-numbered year, each agency is required to submit a copy of its information security plan to the Department of Information Resources.

As technological advancements have increased the likelihood of cybersecurity attacks, the private sector has adopted certain best practices to address the issue. Observers have noted that state agencies will continue to be prone to cybersecurity risks if they do not take measures to adopt similar practices to enhance the security of agency information, including personally identifiable or confidential information.

DIGEST: SB 1910 would amend current law relating to information security plans, information technology employees, and online and mobile applications.

Audit of information security plans. The Department of Information Resources (DIR) would be required to select a portion of submitted state agency security plans to audit in accordance with department rules and subject to available resources. DIR would adopt rules necessary to implement this requirement as soon as practicable after September 1, 2017.

Independent information security officer. Each agency in the executive branch of state government that had a chief information security officer or

an information security officer would have to ensure that within the agency's organizational structure, the officer was independent from and not subordinate to the agency's information technology operations.

Data security plan for online and mobile applications. Each state agency with a website or mobile application that processes personally identifiable or confidential information would have to submit a data security plan to DIR before beta testing that included relevant security information defined in the bill. DIR would review each plan and make any recommendations to the agency as soon as practicable after the department reviewed the plan.

An agency also would be required to subject such a website or application to a vulnerability and penetration test conducted by a third party and address any vulnerability identified prior to deployment.

The bill would take effect September 1, 2017.

NOTES:

According to the Legislative Budget Board's fiscal note, a cost resulting from the bill is expected but could not be determined. DIR estimates an annual negative impact of $900,000 to the Clearing Fund to perform audits for security plans. Other costs to agencies could result from third-party vulnerability and penetration testing of online and mobile applications.

SUBJECT: Amending certain district certificates of public convenience and necessity

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 9 ayes — Larson, Phelan, Ashby, Burns, Kacal, T. King, Nevárez, Price, Workman

0 nays

2 absent — Frank, Lucio

SENATE VOTE: On final passage, May 4 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2777:*
For — Robert Laughman, Aqua Texas; (*Registered, but did not testify*: Buddy Garcia and Eric Wright, Aqua Texas; Kerry Cammack, SouthWest Water Company)

Against — None

On — (*Registered, but did not testify*: Tammy Benter, Public Utility Commission)

BACKGROUND: Water Code, sec. 13.242 requires a utility, county utility, or water supply or sewer service corporation to obtain a certificate of public convenience and necessity (CCN) from the Public Utility Commission (PUC) before rendering retail water or sewer services.

Under sec. 13.245, PUC may not grant a CCN to a utility for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality, unless certain conditions apply.

A class A utility is defined as a public utility that provides retail water or sewer service through 10,000 or more taps or connections.

Some suggest that a partnership between utilities and municipal utility districts could relieve some of the burden on the districts and allow

investment in community projects and facilities under a shared certificate of convenience and necessity.

DIGEST:

CSSB 1842 would allow a class A utility to apply to the Texas Commission on Environmental Quality (TCEQ) for an amendment of a municipal utility district's certificate of public convenience and necessity (CCN) to allow the utility the same rights and powers under the certificate.

An application would have to include certain information, including applicant identification, CCN number, written consent of the district, a statement that the application was supported by a contract between the district and utility, and a description of the proposed service area. The bill would not require the consent of a municipality to amend a CCN for an area within that municipality's extraterritorial jurisdiction.

The Public Utility Commission (PUC) would have to review an application within 60 days after it was filed and could not require any additional information for the application. If PUC found the application was complete, the commission would grant the application to amend the CCN.

PUC's decision would be final after reconsideration, if any, and could not be appealed.

A class A utility that applied for an amendment of a CCN would not be required to file a business plan with the TCEQ executive director before constructing a public drinking water supply system.

An application would be exempt from:

- certain notice and hearing requirements;
- demonstrating that consolidation with another utility was not economically feasible; and
- other administrative procedures relating to agency standards.

This bill would not apply to a CCN held by a district located wholly or partially inside the corporate limits or extraterritorial jurisdiction of a

municipality with a population of at least 2 million (Houston).

The bill would take effect September 1, 2017, and would apply only to an application for an amendment of a CCN filed on or after that date.

NOTES:

CSSB 1842 differs from the Senate-passed bill in that the committee substitute would allow a class A utility to apply for an amendment of a certificate of convenience and necessity to provide services inside a municipal utility district.

SUBJECT: Revising state-developed open-source instructional material

COMMITTEE: Public Education — favorable, without amendment

VOTE: 10 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Daniel Williamson, Rice University; (*Registered, but did not testify*: Brenda McDonald, Anderson-Shiro CISD; Scott Hochberg, Rice University; Luann Hughes, Temple Independent School District, Texas Computer Education Association; Jennifer Bergland, Texas Computer Education Association)

Against — None

On — (*Registered, but did not testify*: Von Byer and Monica Martinez, Texas Education Agency)

BACKGROUND: Education Code, sec. 31.002(1-a) defines open-source instructional material as electronic instructional material that is available for downloading from the internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material.

DIGEST: SB 1784 would amend the Education Code, ch. 31 to adopt a new definition of "open-source instructional material" and modify licensing requirements in connection with such state-developed material.

Open-source instructional material would be defined as teaching, learning, and research resources that resided in the public domain or had been

released under an intellectual property license that permitted the free use, reuse, modification, and sharing of the resource with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

State-developed open-source instructional material could include content not owned by the state and for which preexisting rights could exist if the content:

- was in the public domain;
- could be used under a limitation or exception to copyright law, including a limitation under sec. 107 of the federal Copyright Act of 1976; or
- was licensed to the state for use in an open-source instructional material.

A license for state use would be required to grant the state unlimited authority to modify, delete, combine, or add content and permit the free use and repurposing of the material by any person.

To encourage the use of state-developed open-source instructional materials by school districts and open-enrollment charter schools, the Commissioner of Education would be required to provide a license that allowed for the free use, reuse, modification, or sharing of the material by any person. The bill would remove a requirement that the commissioner provide a license to each public school in the state to use and reproduce the materials.

The bill would specify license requirements for users who reproduce the material, including copyright notices, attributions, modifications, limitations, and terminations. The commissioner could use a license commonly applied to an open education resource in implementing the requirements. A decision of the commissioner on licensing would be final and could not be appealed.

The bill would remove a current requirement that the commissioner seek to recover the costs of developing, revising, and distributing state-

developed open-source instructional materials. It would repeal the adoption schedule for materials contained in Education Code, sec. 31.077.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1784 would make it easier for the Texas Education Agency to expand availability of high-quality open-source instructional materials that are free for districts to use. This would save districts money on expensive textbooks while providing students with an enhanced online learning experience. Rice University won the initial contract to develop materials and expects to have seven textbooks available for students this fall in subjects including statistics and economics.

The bill would encourage the state to develop more open-source materials by allowing standard licensing language for open education resources. It would remove a requirement that TEA recover the costs of developing the instruction materials, which would not be necessary due to the savings that would come from more students using the open-source materials.

OPPONENTS SAY:

SB 1784 would encourage the replacement of textbooks necessary for proper instruction with open-source online materials that may not be as reliable. The benefit of open education resources should be that they are within the public domain and free, and it is counterintuitive that the state would spend money on such materials. The bill could place an undue burden on rural and other school districts that do not have the technical infrastructure in place for online instructional materials.

NOTES:

The House-passed version of SB 1, the general appropriations act, included $10 million for state-developed open-source instructional materials, and the Senate-passed version of SB 1 included $20 million.

SUBJECT: Authorizing a permit and fee for certain vehicles transporting fluid milk

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Minjarez, Phillips, Simmons, E. Thompson, Wray

0 nays

2 absent — Pickett, S. Thompson

SENATE VOTE: On final passage, April 11 — 28-3 (Huffines, Hughes, Uresti)

WITNESSES: *On House companion bill, HB 2862:*
For — Damon Miller, Dairy Farmers of America; Darren Turley, Texas Association of Dairymen; (*Registered but did not testify*: James Terrell, Select Milk Producers, Inc.; Jim Reaves, Texas Farm Bureau; Robert Turner, Texas Poultry Federation; John Esparza, Texas Trucking Association)

Against — Jim Allison, County Judges and Commissioners Association of Texas; (*Registered but did not testify*: David Dillard, Concho County; Tom Keyes, Gaines County; Jerry Bearden, Mason County; Mark Mendez, Tarrant County; Rick Thompson, Texas Association of Counties)

On — (*Registered but did not testify*: Jimmy Archer and Scott McKee, Texas Department of Motor Vehicles; Mark Marek, Texas Department of Transportation)

DIGEST: CSSB 1383 would allow the Texas Department of Motor Vehicles (TxDMV) to issue permits authorizing the transportation of fluid milk by a truck-tractor and semitrailer combination that: had six total axles; was equipped with a roll stability support safety system and truck blind spot systems; did not exceed a gross weight of 90,000 pounds; and complied with all axle weight requirements, unless the axles met several spacing and weight requirements listed in the bill.

These permits would be the only oversize or overweight permits that could be used to transport fluid milk. The permit fee would be $1,200. It would be valid for one year, and would have to be carried in the truck-tractor for which it was issued. TxDMV would have to design a sticker to aid in the enforcement of weight limits. The sticker would have to be issued with a permit, indicate the permit's expiration date, and be placed on the front windshield. It would have to be removed when the permit expired, a lease of the truck-tractor expired, or the truck-tractor was sold.

Permitted vehicle combinations could operate on a federal interstate highway or a state, county, or municipal road, including a frontage road adjacent to a federal interstate highway, if the operation on those highways and roads was approved by the Department of Transportation. These vehicle combinations could not operate on a county road or bridge for which a maximum weight and load limit had been established under certain authority given to counties.

An applicant for a permit would have to designate in the application the counties in which the applicant intended to operate, and the permit would only be valid in those counties. Of the fee collected, 75 percent would be deposited to the credit of the State Highway Fund, 10 percent would be deposited to the credit of the TxDMV fund, and the remaining 15 percent would be divided equally among and distributed to the counties designated in the permit application.

The bill would prohibit a county or municipality from requiring a permit, fee, or license for the operation of these vehicle combinations in addition to the state law requirements, unless otherwise provided by state or federal law.

TxDMV would have to adopt rules to implement these requirements, including rules governing the permit application. The Department of Public Safety would have to adopt rules requiring additional safety and driver training for these permits.

The bill would take effect January 1, 2018.

SUPPORTERS

CSSB 1383 would reduce the wear and tear on roads caused by the

SAY:

transportation of fluid milk by allowing better load distribution. It also would enhance safety on roads as a result of the enhanced safety requirements placed on these vehicle combinations.

While some have raised concerns that county roads would be used without allowing the county to provide input, no road would be used without the approval of the Texas Department of Transportation. These vehicle combinations could not operate on a county road or bridge for which a maximum weight and load limit had been established. If a county wanted to restrict the route further, it could designate load-zoned roads for approval to TxDOT.

OPPONENTS SAY:

CSSB 1383 could result in vehicle combinations operating under these permits to utilize county roads, without giving the county commissioner's court the opportunity to provide input as to which roads within the county could be used.

NOTES:

A companion bill, HB 2862 by K. King, was reported favorably by the House Transportation Committee on May 2.

SUBJECT: Requiring public schools to report data on children with disabilities

COMMITTEE: Public Education — favorable, without amendment

VOTE: 9 ayes — Huberty, Allen, Bohac, Deshotel, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

2 absent — Bernal, Dutton

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: None

BACKGROUND: Education Code, sec. 42.006, governs the Public Education Information Management System (PEIMS), through which each school district and open-enrollment charter school is required to provide certain data, including useful, accurate, and timely information on student demographics and academic performance, personnel, and school district finances.

Under 19 TAC part 2, chap. 97, subch. EE, sec. 97.1072, school districts serving students with disabilities residing in residential facilities located within the district's geographic boundaries are required to report data, as directed by the Texas Education Agency (TEA), in a data collection system accessible through the TEA secure website.

DIGEST: SB 2080 would require the Commissioner of Education by rule to require each school district and open-enrollment charter school to include in the district's or school's Public Education Information Management System (PEIMS) report the number of children with disabilities residing in a residential facility who:

- were required to be tracked by the Residential Facility Monitoring System; and
- received educational services from the district or school.

The bill would take effect only if a specific appropriation was provided in the general appropriations act of the 85th Legislature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 school year.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would result in a negative fiscal impact of about $837,000 to general revenue related funds in fiscal 2018-19 due to data transfer costs. Starting in fiscal 2020, the bill would result in an annual negative fiscal impact of $100,000.

A companion bill, HB 69 by Guillen, was reported favorably by the House Education Committee on April 25 and placed on the General State Calendar for May 11.

SUBJECT: Allowing certain border county EDCs to use tax revenue for skills training

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — Button, Bailes, Deshotel, Hinojosa, Leach, Metcalf, Ortega, Villalba

0 nays

1 absent — Vo

SENATE VOTE: On final passage, April 19 — 28-3 (Burton, Hall, V. Taylor)

WITNESSES: No public hearing

BACKGROUND: Local Government Code, sec. 501.163 allows certain economic development corporations (EDCs) to use tax revenue received from development projects to provide job training skills and job-related life skills to enable an unemployed individual to obtain employment. To use tax revenue for this purpose, an EDC must have been authorized by a municipality that:

- has a population of at least 10,000;
- is located in a county bordering the Gulf of Mexico or Gulf Intracoastal Waterway; and
- has an unemployment rate that averaged at least 2 percent above the state average for the past two years, or is included a metropolitan statistical area with such an unemployment rate.

DIGEST: SB 1748 would amend the requirements of Local Government Code, sec. 501.163 to apply to an economic development corporation authorized by a municipality that met existing population and unemployment qualifications and was located in a county that:

- bordered either the Gulf of Mexico or the Gulf Intracoastal Waterway; or

- bordered Mexico and contained four municipalities with a population of at least 70,000 (Hidalgo).

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

SB 1748 would reduce unemployment and increase Texas' pool of skilled laborers by allowing for additional economic development corporations (EDCs) to use tax revenues for skills training programs. The bill would amend current law to include EDCs created by municipalities in the Rio Grande Valley county of Hidalgo. The bill would help enable workers in municipalities, including McAllen, Edinburg, and Mission, become more productive and boost economic growth in Hidalgo County.

The bill would allow certain EDCs more flexibility while remaining consistent with EDC's purpose of economic development. Training and retaining a skilled workforce is a crucial element of economic development, and EDCs should be able to reinvest tax revenues from their projects in programs that will bolster economic development.

OPPONENTS SAY:

SB 1748 would expand an inappropriate function of government. The state should not be in the business of subsidizing workforce training with taxpayer dollars. Allowing more EDCs to use tax revenues for this purpose leaves less money to provide essential public services.

SUBJECT: Adjusting provider participation programs in certain local governments

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — Coleman, Springer, Biedermann, Neave, Roberts, Stickland, Thierry, Uresti

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, May 2 — 28-3 (Bettencourt, Creighton, Huffines)

WITNESSES: No public hearing

BACKGROUND: The Medicaid sec. 1115 transformation waiver provides supplemental funding to certain Medicaid providers in Texas through the uncompensated care pool and the Delivery System Reform Incentive Payment (DSRIP) pool. The uncompensated care pool payments help offset the costs of uncompensated care, including indigent care, provided by local hospitals. DSRIP pool payments are incentives to hospitals and other providers to improve access to and the quality and cost-effectiveness of health care.

Under the sec. 1115 waiver, eligibility for the uncompensated care pool or the DSRIP pool requires participation in a regional health care partnership, in which governmental entities, Medicaid providers, and other stakeholders develop a regional plan. Governmental entities must provide public funds called intergovernmental transfers to draw down funds from these pools.

Since 2013, the Legislature has created programs in several counties and one city for hospitals to submit payments to a local provider participation fund to draw down federal funding for local governments that lack a hospital district. Some have suggested that local provider participation programs would benefit from increased flexibility and efficiency.

DIGEST:

SB 1462 would amend the local provider participation funds in certain counties and a municipality to allow money deposited in those funds to be used for intergovernmental transfers to provide payments to Medicaid managed care organizations. Funds could be used to refund hospitals paying into the program the proportionate share of money that could not be used to fund the nonfederal share of Medicaid supplemental payment program.

The bill would remove the requirement for a county or municipal tax assessor-collector to collect the mandatory payments made by participating health care providers under those local provider participation programs.

The bill also would specify that an institutional health care provider participating in those programs would be a nonpublic hospital providing inpatient hospital services.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Allowing private or independent colleges to continue a grant program

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Lozano, Raney, Alonzo, Alvarado, Button, Howard, Morrison, Turner

0 nays

1 absent — Clardy

SENATE VOTE: On final passage, March 20 — 25-5 (Burton, Creighton, Hall, Huffines, V. Taylor)

WITNESSES: For — Bruce Brinson, Paul Quinn College; (*Registered, but did not testify*: Ray Martinez, Independent Colleges and Universities of Texas)

Against — None

On — (*Registered, but did not testify*: Ken Martin and Charles Puls, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 61.221 allows the Texas Higher Education Coordinating Board to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university. Sec. 61.222 establishes eligibility requirements for the approval of private or independent institutions of higher education for this purpose, including that they must hold the same accreditation as public institutions of higher education.

The coordinating board may temporarily approve a private or independent institution that previously held, but no longer holds, the same accreditation as public institutions to participate in the tuition equalization grants program if the institution:

- accredited by an accreditor recognized by the board;
- actively working toward the same accreditation as public

institutions of higher education;

- participating in the federal Pell Grant Program; and
- a historically black college or university.

The coordinating board may grant temporary approval for a two-year period and may renew the approval once. Some have suggested that there is a need to ensure college students do not lose funding from the tuition equalization grants program while their independent or private college seeks to restore accreditation to participate in the program.

DIGEST:

SB 331 would allow the Texas Higher Education Coordinating Board to renew twice, rather than once, the two-year temporary approval for an independent or private institution of higher education to participate in the tuition equalization grants program.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Annual report by the comptroller on municipal hotel occupancy taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Darby, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

1 absent — E. Johnson

SENATE VOTE: On final passage, April 19 — 30-1 (Nichols), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3280:*
For — Ann Graham, Texans for the Arts; Scott Joslove, Texas Hotel and Lodging Association; (*Registered, but did not testify:* Drew Scheberle, Greater Austin Chamber of Commerce;)

Against — (*Registered, but did not testify:* Guadalupe Cuellar, City of El Paso)

BACKGROUND: Tax Code, ch. 351 allows municipalities to collect a tax of up to 7, 8.5, or 9 percent on certain hotel rooms, depending on the municipality. Sec. 351.101 restricts the use of that revenue to promote tourism and the convention and hotel industry, and lays out specific categories of expenditures within those purposes.

Local Government Code, ch. 334 authorizes, contingent on voter approval, the imposition of an additional 2 percent hotel occupancy tax by a city or county if an approved venue project is or is planned to be located in the jurisdiction. Revenues collected under ch. 334 may be used to acquire, construct, improve, and equip a convention center or related infrastructure.

DIGEST: SB 1221 would require cities that impose a hotel occupancy tax under Tax Code, ch. 351 to submit a report to the comptroller by February 20 each

year. The report would contain the tax rate and amount of revenue derived from any municipal hotel occupancy tax.

The report also would be required to contain the amount and percentage of revenue derived from municipal hotel occupancy taxes collected under Tax Code, ch. 351 that is directed to:

- acquisition, construction, maintenance, or improvement of convention center facilities or visitor information centers;
- furnishing of facilities, personnel, and materials for the registration of convention delegates;
- advertising and conducting promotional programs to attract tourists and convention delegates;
- promotion of the arts;
- historical preservation; and
- signage directing the public to sights and attractions.

As soon as is practicable, the comptroller would create the necessary forms, which municipalities would be required to submit by February 20, 2018.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

NOTES:

A companion bill, HB 3280 by Hinojosa, was left pending in the House Ways and Means Committee on April 19.

SUBJECT: Prohibiting the regulation of seed by a political subdivision

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 6 ayes — T. King, González, C. Anderson, Cyrier, Rinaldi, Stucky

0 nays

1 absent — Burrows

SENATE VOTE: On final passage, April 3 — 30-1 (Watson)

WITNESSES: *On House companion bill, HB 2758:*
For — Jim Reaves, Texas Farm Bureau; Bryan Gentsch, Texas Seed Trade Association; (*Registered but did not testify:* Tom Tagliabue, City of Corpus Christi; Mark Howard, Corn Producers Association of Texas; Lauren Wied, Dow AgroSciences; Daniel Womack, Dow Chemical; Warren Mayberry, DuPont; Kody Bessent, Plains Cotton Growers, Inc.; Donnie Dippel, Texas Ag Industries Association; Dee Vaughan, Texas Grain Producers Indemnity Board; Patrick Wade, Texas Grain Sorghum Association; Jeff Stokes, Texas Nursery and Landscape Association; Steelee Fischbacher, Texas Wheat Producers Association)

Against — Judith McGeary, Farm and Ranch Freedom Alliance; Joy Casnovsky, Sustainable Food Center; (*Registered but did not testify:* Gaye Hough, Farm and Ranch Association; Gordon Walton)

On — Stacey Steinbach, Texas Water Conservation Association; (*Registered but did not testify:* Mike Mann, Texas Department of Agriculture)

DIGEST: CSSB 1172 would prohibit a political subdivision from adopting an order, ordinance, or other measure that regulated agricultural seed, vegetable seed, weed seed, or any other seed in any manner, including planting seed or cultivating plants grown from seed. Any order, ordinance, or other measure that violated this prohibition would be void.

A political subdivision could adopt an order, ordinance or other measure regulating seed to:

- comply with any federal or state requirement;
- avoid a federal or state penalty or fine;
- attain or maintain compliance with federal or state environmental standards, including water quality standards; or
- implement a voluntary program as part of a conservation water management strategy included in the applicable regional water plan or state water plan.

The bill would not preempt or otherwise limit the authority of a county or municipality to adopt and enforce zoning regulations, fire codes, building codes, storm water regulations, nuisance regulations, or waste disposal restrictions.

The bill would take effect September 1, 2017, and would apply to an order, ordinance or other measure adopted before, on, or after that date.

SUPPORTERS SAY:

CSSB 1172 would create uniformity in the application of seed regulations across Texas. Political subdivisions have begun passing ordinances banning the use of certain seeds. These ordinances run contrary to free market principals and create costly burdens on farmers, especially farmers who may have a field located in more than one county. Market participants would be better served by having one uniform seed law covering the entire state.

OPPONENTS SAY:

CSSB 1172 would negatively impact a county's ability to create rules specific to their location. There are several situations that could motivate a county to create reasonable ordinances regulating seeds, including restricting the timing of planting and creating buffer zones to prevent contamination. The word "cultivating" in the bill could be interpreted broadly and lead to unintended consequences.

NOTES:

CSSB 1172 differs from the Senate-passed version in that the committee substitute would not preempt or otherwise limit the authority of a county or municipality to adopt and enforce storm water regulations.

A companion bill, HB 2758 by Geren, was left pending following a public hearing in the Agriculture and Livestock Committee on April 12.

SUBJECT: Approval of payments by certain navigation districts

COMMITTEE: Transportation — favorable, without amendment

VOTE: 10 ayes — Morrison, Martinez, Burkett, Y. Davis, Goldman, Israel, Pickett, Simmons, E. Thompson, Wray

0 nays

3 absent — Minjarez, Phillips, S. Thompson

SENATE VOTE: On final passage, April 26 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Observers note that some port authorities do not have a district treasurer, as the county has abolished the position of the county treasurer who can fulfill that role. Some say that this can make the procedure for authorizing a payment by the port authority unclear.

DIGEST: SB 1131 would allow a designated officer of certain navigation districts to make a payment on behalf of the district without first receiving authorization from the district treasurer. The payment would have to be made by a check and consistent with certain existing procedures.

The bill would take effect September 1, 2017.

NOTES: A companion bill, HB 2592 by Herrero, was reported favorably by the House Committee on Transportation on May 2.

SUBJECT: Merging the used oil recycling and water resource management accounts

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 24 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Cosper, S. Davis, Dean, Giddings, Gonzales, González, Howard, Koop, Miller, Muñoz, Perez, Phelan, Raney, Roberts, J. Rodriguez, Rose, Sheffield, Simmons, VanDeaver, Walle

0 nays

3 absent — Capriglione, Dukes, Wu

SENATE VOTE: On final passage, April 19 — 30-1 (V. Taylor), on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 3026:*
For — (*Registered, but did not testify:* Adam Cahn, Cahnman's Musings; Heather Cooke, City of Austin, Water Environment Association of Texas, Texas Association of Clean Water Agencies; Cyrus Reed, Lone Star Chapter Sierra Club; Trent Townsend, The Nature Conservancy; Jeff Heckler, San Antonio Water System; Amanda Martin, Texas Association of Business; Stephanie Simpson, Texas Association of Manufacturers; Scott Stewart, Texas Chemical Council; Joshua Houston, Texas Impact; Lindsey Miller, Texas Independent Producers and Royalty Owners Association)

Against — None

On — Elizabeth Sifuentez Koch, Texas Commission on Environmental Quality

BACKGROUND: Water Code, sec. 26.0291 establishes a water quality fee that is to be deposited in the water resource management account. The funds in the account may be appropriated and used by the Texas Commission on Environmental Quality to protect water resources in the state, including assessment of water quality.

Health and Safety Code, sec. 371.061 establishes the used oil recycling account, which consists of fees imposed on used oil collection centers, used oil handlers, and the sale of automotive oil, as well as interest and penalties related to the fees and gifts, grants, or donations. The fund is to be used for public education on used oil recycling, supporting used oil collection centers, and related costs.

Some observers have suggested that the water resource management account does not have sufficient revenue to sustain the programs it supports, while the used oil recycling fund underutilizes funds that could be used elsewhere.

DIGEST:

SB 1105 would eliminate the used oil recycling account and transfer any remaining funds and future deposits to the water resource management account. The bill also would include the currently allowed uses for money in the used oil recycling account, such as public education with regard to used oil recycling, in the allowed uses for money in the water resource management account.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, HB 3026 by Phelan, approved by the House on May 9.

SUBJECT: Exempting certain personal information of applicants from disclosure

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 6 ayes — S. Davis, Capriglione, Nevárez, Price, Shine, Turner

0 nays

1 absent — Moody

SENATE VOTE: On final passage, March 29 — 31-0

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 552.021 requires that public information be available to the public at least during the governmental body's normal business hours.

Sec. 552.024(a) requires each employee or official and each former employee or official of a governmental body to choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, emergency contact information, or social security number, or that reveals whether the person has family members.

Some observers contend that a person who applies for a gubernatorial appointment also should be protected from the disclosure of personal information.

DIGEST: SB 705 would make an exception to available public information for certain information obtained by the governor or Senate in connection with an applicant for an appointment by the governor. Information that would be made confidential would be the applicant's home address, home telephone number, and social security number.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2017, and would apply only to a request for information that was received by a governmental body or an officer for public information on or after that date.

SUBJECT: Increasing penalty to state-jail felony for certain abuse of corpse offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

SENATE VOTE: On final passage, April 25 — 31-0

WITNESSES: For — Michelle Jones Mcelhanon, Justice for the Unspoken; Nakia Davis, Justice for the Unspoken - Sgt. Larry Ray Davis; Mary Hurst, the victims of Johnson Family Mortuary; Kenneth Braxton, victim of Johnson & Johnson Mortuary; Felicia Braxton, victim of Johnson Mortuary; Lisa Lopez; (*Registered, but did not testify*: Vincent Giardino, Tarrant County Criminal District Attorney's Office)

Against — None

BACKGROUND: Penal Code, sec. 42.08 makes abuse of a corpse a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). It is an offense if the person, without legal authority, knowingly:

- disinters, disturbs, damages, dissects, carries away, or treats in an offensive manner a human corpse;
- conceals a human corpse knowing it to be illegally disinterred;
- sells or buys a human corpse or in any way traffics in a human corpse;
- transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state; or
- vandalizes, damages, or treats in an offensive manner the space in which a human corpse has been interred or otherwise permanently laid to rest.

Some have argued that the penalties relating to certain types of abuse of a corpse that relate to the handling of human remains do not adequately fit

the severity of the crime.

DIGEST:

SB 524 would increase from a class A misdemeanor to a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) the penalty for abuse of a corpse, except that an offense involving vandalizing, damaging, or treating in an offensive manner the space in which a human corpse had been interred or otherwise permanently laid to rest would remain a class A misdemeanor.

SB 524 would take effect September 1, 2017, and would apply only to an offense committed on or after that date.

SUBJECT: Exempting certain bonds from capital appreciation bond regulations

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 6 ayes — Parker, Stephenson, Burrows, Dean, Holland, Longoria

0 nays

1 absent — E. Johnson

SENATE VOTE: On final passage, April 25 — 31-0

WITNESSES: No public hearing

BACKGROUND: HB 114 by Flynn, enacted by the 84th Legislature in 2015, created Government Code, sec. 1201.0245 to regulate the issuance of capital appreciation bonds.

Sec. 1201.0245(a) defines a "capital appreciation bond" as a bond that accrues and compounds interest from its date of delivery, for which interest is payable only upon maturity or prior redemption. Sec. 1201.0245(b) prohibits a political subdivision from issuing capital appreciation bonds secured by property taxes unless the subdivision meets certain conditions, including placing a 20-year maturity time frame on the bonds, providing cost estimates, making determinations about possible conflicts of interest, and maintaining certain online records pertaining to the bonds. Sec. 1201.0245(j) specifies that the prohibition in subsection (b) does not apply to the issuance of capital appreciation bonds issued to finance transportation projects or refunding bonds.

Sec. 1201.0245(c-i) regulates the issuance of capital appreciation bonds secured by ad valorem taxes, including the responsibilities of the issuing political subdivision's governing body and the authorized uses of bond proceeds. Because this and the rest of sec. 1201.0245, other than subsection (b), apply to capital appreciation bonds issued to finance transportation projects or refunding bonds, some observers contend that the exception provided under current law is too narrow to accomplish its

intended goals, and that none of sec. 1201.0245 should apply to the issuance of bonds for these purposes.

DIGEST:

SB 295 would exempt refunding bonds and capital appreciation bonds for financing transportation projects from all requirements of Government Code, sec. 1201.0245.

The bill would take effect September 1, 2017, and would apply only to a bond issued on or after that date.

SUBJECT: Regulating certain guardianship programs

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Gutierrez

SENATE VOTE: On final passage, March 8 — 31-0

WITNESSES: No public hearing

BACKGROUND: Government Code, sec. 155.102 requires individuals providing guardianship and related services to hold a certificate issued by the Judicial Branch Certification Commission (JBCC). Sec. 155.105 requires a guardianship program to provide an annual report to the commission with certain information, including the number of wards it serves and the amount of money it receives from public sources.

Concerns have been raised about the lack of regulatory authority JBCC has over certain guardianship programs. Under current law, the commission has authority to certify and regulate individual professional guardians but not guardianship programs that employ one or more individual guardians. Guardianship programs only are required to disclose information about their wards to JBCC annually.

DIGEST: SB 36 would require a guardianship program to be registered and hold a certificate of registration issued by the Judicial Branch Certification Commission (JBCC) in order to be appointed as a guardian. The bill would prohibit a guardianship program from employing an individual to provide guardianship and related services if the individual's certificate was expired, revoked, or suspended.

The bill also would require JBCC, in consultation with the Health and

Human Services Commission (HHSC) and other interested parties, to adopt standards for operations of guardianship programs designed to ensure quality of their services and continual compliance by guardianship programs with applicable laws. Guardianship programs under contract with HHSC would not be subject to the standards.

The bill would require the Supreme Court of Texas to adopt the rules and procedures for issuing, renewing, suspending, and revoking a guardianship program's registration certificate. The rules would:

- ensure compliance with the JBCC's standards;
- direct JBCC to establish qualifications for obtaining and maintaining a registration certificate;
- specify that a registration certificate would expire two years after its date of issue;
- prescribe procedures for accepting complaints and conducting investigations of alleged violations of the guardianship program of standards or applicable state law; and
- detail procedures by which the JBCC, after notice and a hearing, could suspend or revoke a registration certificate.

A guardianship program would not be required to hold a registration certificate under the bill until September 1, 2018.

SB 36 would require JBCC to publish on its website information, updated at least quarterly, on all registered guardianship programs, including information on whether a program was in good standing.

The bill would take effect September 1, 2017, and would require JBCC and the Supreme Court to adopt the rules and standards necessary to implement the bill's provisions as soon as practicable after that date.